



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On June 5, 2012,<sup>1</sup> the United States Court of International Trade (“CIT”) or (“Court”) sustained the Department of Commerce’s (the “Department”) results of redetermination<sup>2</sup> pursuant to the CIT’s remand order in *Jinan Yipin Corporation, Ltd. and Shandong Heze International Trade And Developing Company, v. United States*, 774 F. Supp. 2d 1238 (CIT April 12, 2011) (“*Jinan Yipin III 2011*”).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”), the Department is notifying the public that the final judgment in this case is not in harmony with *Garlic AR8 Final Results*<sup>3</sup> and is amending the final results of the administrative review of the antidumping duty order on fresh garlic from the People’s Republic of China (“PRC”) covering the period of review (“POR”) of November 1, 2001 through October 31, 2002, with respect to the margins assigned to Jinan Yipin Corporation Ltd. (“Jinan Yipin”) and Shandong Heze International Trade And Developing Company (“Shandong Heze”).

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<sup>1</sup> *Jinan Yipin Corporation, Ltd. and Shandong Heze International Trade And Developing Company, v. United States*, Slip Op. 12-68 (CIT June 5, 2012) (judgment).

<sup>2</sup> Final Results of Third Redetermination Pursuant to Court Remand filed with the Court September 7, 2011 (signed September 2, 2011) (“*Jinan Yipin III Redetermination*”) available at: <http://www.ia.ita.doc.gov/remands/index.html>.

<sup>3</sup> See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 69 FR 33626 (June 16, 2004) (“*Garlic AR8 Final Results*”), and accompanying Issues and Decision Memorandum (“Issues and Decision Memorandum”).

EFFECTIVE DATE: (June 15, 2012)

FOR FURTHER INFORMATION CONTACT: Lindsey Novom, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-5256.

SUPPLEMENTARY INFORMATION:

Background

Subsequent to completion of the eighth administrative review of the antidumping duty order on fresh garlic from the PRC,<sup>4</sup> two respondents, Jinan Yipin and Shandong Heze, challenged certain aspects of the Department's final results of review at the CIT. On November 15, 2007, the CIT affirmed in part the *Garlic AR8 Final Results* and remanded other aspects of the decision to the Department.<sup>5</sup> On March 14, 2008, the Department issued its remand redetermination,<sup>6</sup> wherein we: 1) treated sales by Jinan Yipin to Houston Seafood negotiated after March 29, 2002 as unaffiliated party transactions; 2) recalculated Jinan Yipin's weighted-average dumping margin by including all of its reported POR sales information (rather than applying the 376.67 percent rate to certain transactions); 3) recalculated Jinan Yipin's indirect selling expenses incurred in the United States; 4) continued to rely on data from the National Horticultural Research and Development Foundation ("NHRDF") to value Jinan Yipin and Shangdong Heze's garlic seed used in the production of fresh garlic; 5) continued to value water with municipal water rates to account for the respondents' water consumption used in the production of fresh garlic; and 6) continued to value Jinan Yipin's packing cartons with Indian Import Statistics. As a result, we calculated a revised weighted-average margin for Jinan Yipin,

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<sup>4</sup> See *Garlic AR8 Final Results*.

<sup>5</sup> See *Jinan Yipin Corporation, Ltd. and Shandong Heze International Trade And Developing Company, v. United States* 526 F. Supp. 2d 1347 (CIT Nov. 15, 2007) ("*Jinan Yipin I 2007*").

<sup>6</sup> See *Jinan Yipin Corporation, Ltd. and Shandong Heze International Trade and Developing Company v. United States*, Consol. Court No. 04-00240, Slip Op. 07-168 (November 15, 2007) Final Results of Redetermination Pursuant to Court Remand, dated March 14, 2008 ("*Jinan Yipin I Redetermination*") available at: <http://www.ia.ita.doc.gov/remands/index.html>.

however Shandong Heze's antidumping duty margin remained consistent with the margin issued in *Garlic AR8 Final Results*.

On July 2, 2009, the CIT affirmed the *Jinan Yipin I Redetermination*, with regard to issues 1, 2, and 3, discussed above. However, the Court remanded the redetermination with regard to issues 4, 5, and 6, discussed above. Additionally, the Court directed the Department to examine an alleged ministerial error in the calculation of the surrogate financial ratios that Jinan Yipin raised for the first time in this proceeding in its comments on the draft redetermination pursuant to *Jinan Yipin I 2007*. The Department had declined to address this ministerial error allegation in the *Jinan Yipin I Redetermination* on the basis that the alleged ministerial error was not raised during the administrative proceeding pursuant to our regulations<sup>7</sup> or in Jinan Yipin's complaint in this litigation, and the issue was not remanded by the Court, and, therefore, was not before the Department on remand.<sup>8</sup>

On February 25, 2010, the Department issued its second remand redetermination,<sup>9</sup> wherein we: 1) again continued to rely on data from the NHRDF to value Jinan Yipin and Shandong Heze's garlic seed used in the production of fresh garlic; 2) re-evaluated both respondent's water consumption and determined to value the irrigation pumping costs (*i.e.*, the energy used to pump the water) rather than valuing the water consumed in production, because both respondents incur only the irrigation cost associated with pumping the water from wells; 3) continued to value Jinan Yipin's packing cartons with Indian Import Statistics, however, in response to the Court's directive we provided further explanation as to why the Department had determined to exclude imports from Indonesia, South Korea, and Thailand in deriving this surrogate value; and 4) determined that we had made a ministerial error in the calculation of the

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<sup>7</sup> 19 CFR 351.224.

<sup>8</sup> See *Jinan Yipin I Redetermination* at p. 36.

<sup>9</sup> See *Jinan Yipin Corporation, Ltd. and Shandong Heze International Trade and Developing Company v. United States*, Consol. Court No. 04-00240, Slip Op. 09-70 (CIT July 2, 2009) Final Results of Redetermination Pursuant to Court Remand, dated February 25, 2010 ("*Jinan Yipin II Redetermination*") available at: <http://www.ia.ita.doc.gov/remands/index.html>.

surrogate financial ratios, as alleged by Jinan Yipin, and corrected this ministerial error as directed by the Court. As a result, we calculated revised weighted-average dumping margins of 6.58 percent for Jinan Yipin and 40.66 percent for Shandong Heze.

In the *Jinan Yipin II Redetermination*, the Department declined to address an argument put forth by Jinan Yipin concerning the calculation of its surrogate labor wage rate, on the basis that the company raised the issue for the first time in its comments on the draft version of that redetermination.<sup>10</sup> However, during the pendency of this litigation, the CAFC issued its decision in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372-73 (Fed. Cir. 2010) (“*Dorbest*”), invalidating the Department's regulation, 19 CFR 351A.08(c)(3), which previously governed our calculation of a respondent's surrogate labor wage rate. On June 30, 2010, with the Department's consent, Jinan Yipin moved to amend its complaint to add a new count, “Count 8,” challenging our prior calculation of the company's surrogate labor wage rate under 19 CFR 351A.08(c)(3).

The CIT granted Jinan Yipin leave to amend its complaint to add this new count on July 20, 2010. On April 12, 2011, the CIT issued its opinion in *Jinan Yipin III* and granted the Department's request for a voluntary remand for the purpose of recalculating Jinan Yipin's surrogate labor wage rate.<sup>11</sup> In that opinion, the CIT upheld the *Jinan Yipin II Redetermination* with regard to all other issues.

On September 7, 2012 the Department filed its third remand redetermination with the Court, wherein we recalculated the surrogate wage rate for Jinan Yipin.<sup>12</sup> As a result, we calculated a revised weighted-average dumping margins of 1.77 percent for Jinan Yipin.

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<sup>10</sup> See *Jinan Yipin II Redetermination* at Comment 4.

<sup>11</sup> See *Jinan Yipin III* at 18.

<sup>12</sup> See *Jinan Yipin III Redetermination*.

### Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s June 5, 2012, judgment sustaining the *Jinan Yipin III Redetermination* constitutes a final decision of that court that is not in harmony with the *Garlic AR8 Final Results*. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rates will remain the respective company-specific rates established for the subsequent and most recent period during which the respondents were reviewed.

### Amended Final Results

Because there is now a final court decision with respect to these Plaintiffs, the revised dumping margins are as follows:

Exporter	Weighted-Average Margin (Percent)
Jinan Yipin Corporation, Ltd. <sup>13</sup>	1.77
Shandong Heze International Trade And Developing Company <sup>14</sup>	40.66

In the event the CIT’s ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from the two companies named above based on the revised assessment rates calculated by the Department.

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<sup>13</sup> See *Jinan Yipin III Redetermination*

<sup>14</sup> See *Jinan Yipin II Redetermination*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_ June 11, 2012 \_\_\_\_\_  
Date

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